

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

KEVIN CLAPP,)	
Plaintiff,)	
)	
V.)	Civil Action No. 18-10426-ADB
)	
MARK COHEN, JOHN FANNING,)	
BRUCE TOBIN, BRIAN TULLY, and)	
SCOTT KEARNS, and BRIAN BROOKS,)	
Defendants.)	

DEFENDANT SCOTT KEARNS'
MOTION FOR PARTIAL SUMMARY JUDGMENT
AND REQUEST FOR ORAL ARGUMENT

Now comes Scott Kearns, a Defendant in the above captioned matter, and moves this Honorable Court pursuant to Fed. R. Civ. P. 56 to enter judgment in his favor on the all claims remaining against Kearns for alleged violations of the rights of the Plaintiff, Kevin Clapp, as he seeks to enforce those rights through 42 U.S.C., § 1983, with the exception of the Plaintiff's claim of excessive force against Kearns during his arrest at the Plaintiff's home in Brockton, Massachusetts.

Summary judgment should be granted because "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a),(c). Furthermore, Defendant Kearns is entitled to the defense of qualified immunity for his actions. Harlow v. Fitzgerald, 457 U.S. 800, 102 S.Ct. 2727, 72 L.Ed.2d 396 (1982).

In further support of this motion, Defendant Kearns relies upon the accompanying joint statement of material facts filed pursuant to L.R. 56.1, D. Mass. (**ECF No. 174**), a memorandum of law, and exhibits and attachments thereto.

Pursuant to Local Rule 7.1(D), Kearns respectfully requests oral argument be scheduled

on his motion.

WHEREFORE, Scott Kearns respectfully requests that his Motion for Summary Judgment be granted, that judgment enter in his favor and that he be awarded fees and costs as a prevailing party.

Respectfully submitted,

The Defendant,
SCOTT KEARNS,
By his attorneys,

ROGAL & DONNELLAN, P.C.

/s/ Joseph G. Donnellan
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November 22, 2021

CERTIFICATE OF SERVICE

I, Joseph G. Donnellan, hereby certify that I served a copy of the foregoing DEFENDANT SCOTT KEARNS' MOTION FOR SUMMARY JUDGMENT to all counsel of record, via ECF, and to those not so registered via 1st Class U.S. Mail, postage prepaid this 22nd day of November, 2021.

/s/ Joseph G. Donnellan
Joseph G. Donnellan